

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOHN KOLLAR

SERIAL NO.: 08/567,564

FILED : DECEMBER 5, 1995

FOR : PREPARATION OF DIALKYL PEROXIDES

ART UNIT : 1204

EXAMINER : PORFIRIO NAZARIO-GONZALES

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to the ASSISTANT COMMISSIONER OF PATENTS, BOARD OF PATENT APPEALS AND INTERFERENCES, Washington, D.C. 20231 on August 22, 1998.

John Kollar
(Name of Registered Rep.)

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(Signature and Date)

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Assistant Commissioner for Patents
BOARD OF PATENT APPEALS AND INTERFERENCES
Washington, D.C. 20231

Sir:

"Special" status has been GRANTED to the above identified application under 37 CFR §1.102(c). "Special Dispatch" treatment is mandated according to 37 CFR §1.607(b).

Applicant in the above identified application respectfully submits this Appellant Reply Brief in accordance with 37 CFR § 1.193(b).

BEFORE THE BOARD OF PATENT APPEAL AND INTERFERENCES**APPELLANT'S REPLY BRIEF**

Paper No. 22

In accordance with 37 CFR § 1.193(b), new points of argument are made in Examiner's Answer, based on a number of material Examiner's errors. Errors of attribution, errors of new misleading verbiage which conveys the wrong message and Examiner's erroneous statements with respect to issues appellant has cited but were previously ignored by Examiner.

Examiner commences with an error, appellant's brief was filed on May 8, 1998 and not on June 18, 1998.

On Examiner's Answer Section (i)

The citation to be discussed follows.

"ACC desires to receive a disclosure of the Technology for the purpose to evaluate the Technology to determine whether ACC desires to make an offer to Redox to acquire the Technology"

Examiner is incorrect in when he states that appellant equates the word "acquire" with "to buy". Appellant has always equated "acquire" with "to get or to gain" the fundamental definition not only of Oxford and Webster but also Black's Law Dictionary ("acquire" page enclosed with Examiner's Answer). Appellant has previously advised Examiner in Paper No. 10 Jan. 17, 1998 on page 4 that there are innumerable ways (indeed hundreds) to acquire, which do not involve buying or selling.

Examiner failed to address this highly specific, easy to determine definition in his rejection response. Now in defense of his "acquire" usage, Examiner cites a definition with some select limited examples of ways to acquire. Examiner arbitrarily chooses to ignore all of his listed examples "to obtain by search, endeavor, investment, practice, or purchase", except the single word "purchase", upon which Examiner fixates. Examiner arbitrarily chooses to ignore the primary definition of "acquire" which is "To get by any means", as defined in Black's Law Dictionary (Examiner's Reference).

Then Examiner proceeds to fabricate his argument, "It is clear that in order to purchase an article, the article must be on sale or was offered for sale." One can "acquire" an article by stealing, by bartering, by endeavor, by inheriting, by lien, by borrowing, by earning, by scam etc. Clearly, Examiner's must need not be to acquire, there are innumerable (hundreds) of ways to acquire something even like an article.

Examiner states, "Contrary to Applicant's arguments, the above citation does not mention the purchase of rights, licensing etc. of the Technology but rather the purchase of the Technology."

Examiner is doubly wrong. The citation in question never referred to the purchase of Technology.

Secondly, appellant has never argued that the citation means what Examiner contends. Appellant has argued

that the citation was vague. See Paper No. 10 Jan. 17, 1998, page 4, for appellant statements about the citation which is "ACC's legally authored words "to acquire the Technology" are intentionally vague, ill defined, non specific words of the quid pro quo of a confidence agreement and are subject to numerous interpretations."

From Paper No. 10 Jan. 17, 1998, page 5, last paragraph, a statement of applicant's method of achieving innovation is stated. "From the direct evidence, for Redox to "acquire the Technology" has always meant gaining some future rights to the "Technology" by participating and contributing to its development and innovation. This is evidenced in ..." etc.

Is it that the Examiner's intent is to have the instant reader equate the word "purchase" with "acquire". Can it be that Examiner continues to use the word "purchase" in his arguments because "purchase" has a close relationship to "buy" and then by reversing attributes he can transform "buy" to "sell". Is this a subtle way to deceive the Board?

Why didn't the Examiner choose a direct evidence supportable sub definition of "acquire", such as "earn" or "obtain by endeavor". When one choose to select a single characteristic from multitude of others and further chooses to ignore and resist all others, I regretfully believe the word biased is correct and appropriate.

On Examiner's Answer Section (ii)

Examiner garbles the first paragraph and suggests they are Redox arguments. Exhibits 3 and 6 are a Joint Redox-Celanese R&D Agreement and a ACC Confidence Agreement.

Examiner introduces an interesting juxtaposition of a referenced case payment of \$5,000 which was never a sale of an invention, next to a \$20,000 fee paid to Redox by ACC. This is a shameful inference. The highly specific purpose of the ACC fee as has been previously pointed out to and ignored by Examiner is detailed in Exhibit 6 on page 2 paragraph 4. See Paper No. 10 Jan. 17, 1998 on page 13, last paragraph.

With about \$ 8,000,000 R&D expenditures and 1000's of hours of uncompensated efforts, it is preposterous to believe that Redox would "offer to sell" this effort for \$ 20,000 as Examiner and ACC (in USPTO filed Protest under 37 CFR §1.291(a)) implies.

Examiner attempts to create the same unsubstantiated implication concerning Celanese.

Examiners arguments are rebutted in Appellant Brief. Documentary evidence to rebut Examiner's irrelevant "control" issue, showing that Redox has full and instant control of Redox's Technology is in Exhibit 6, page 2, paragraph 4, second sentence.

On Examiner's Answer Section (iii)

The USPTO review issue was raised but always unresponsively ignored by Examiner until Examiner's Answer.

Counsel who prosecuted the USPTO review cases is an attorney for Bayer A.G., the Redox development partner in this case. Bayer interests were solely to determine that patentable subject matter would not meet up with a 35 U.S.C. § 102(b) to "sell and/or use" bar.

Examiner in section (iii) is wrong when he attributes the following ".....agreements (Redox prepared confidence agreements) were made within 1 year of the filing date of the application....." to Bayer/Redox counsel in the file of U.S. Application SN. 08/053,791(now U.S. Pat. No. 5,321,157. Parens my inclusion, underline error emphasis.

Actual stated verbiage is "Applicant through his assignee company Redox Technologies Inc. entered into a number of Confidentiality Agreements relating to the subject matter of the above reference application more than one year before filing the parent application Serial No. 07/951,743." underline is my emphasis

A copy of Redox prepared Confidence Agreements is in the file of Serial No. 07/951,743. Redox takes accountability for its words and actions, but cannot accept Examiners contention that Redox is responsible for every conceivable version of someone else vague verbiage even when

transposed and reversed. Examiner's arbitrary choosing of one out of innumerable means of attaining "acquire" and his unresponsiveness to address this early emphasized error at an earlier time, along with his current attempts to obfuscate, is wrong or worst.

Examiner uses the "snowflake theory of distinction" of "not the same" and attempts to redirect and suggests this matter is not about the 35 U.S.C. § 102(b) to "sell and/or use" bar but about patentability of the claims. That is absurd on its face.

Respectfully submitted,


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